



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **25th day of March, 1996**

SERVED MAR 29 1996

Complaint of

FINE AIRLINES, INC.

against

THE GOVERNMENT OF THE REPUBLIC OF PERU

under 49 U.S.C. section 41310

Docket OST-95-691

ORDER

On September 27, 1995, Fine Airlines, Inc. (Fine), filed a complaint under 49 U.S.C. section 41310 (formerly section 2(b) of the International Air Transportation Fair Competitive Practices Act of 1974 (IATFPCA), as amended) against the Government of the Republic of Peru (Peru). Fine contends that Peru has prohibited it from conducting air transportation to, from, or over the territory of Peru, and that this action warrants remedial action under Section 41310 because it unreasonably and unjustifiably discriminates against a U.S. carrier and limits its access to a foreign market. ¹

By Order 95-10-3, the Department invited all interested parties to file answers to Fine's complaint. Export Air del Peru, S.A., Empresa de Transporte Aereo del Peru, S.A. (Aeroperu), and Compania de Aviacion "Faucett" filed answers. Fine filed a reply together with a request for immediate action on its complaint. Subsequently, Peru filed comments through diplomatic channels which it stated could be made part of the public record in this case. ² Fine filed a response to Peru's comments. The parties to this case have filed various additional pleadings over the past few months. ³

By Orders 95-11-40, 95-12-35, 96-1-34, and 96-2-44, we extended for consecutive 30-day periods the timeframe within which we must act on Fine's complaint, based on a finding that governmental and carrier efforts to resolve Fine's concerns had been initiated and that those efforts were likely to result in a satisfactory resolution of Fine's complaint. ⁴

On March 22, 1996, Fine filed a request for a further extension of the action deadline through April 9, 1996, stating that intergovernmental efforts to resolve this matter are continuing and that additional time is necessary for a diplomatic resolution to be achieved.

¹ Fine states that the ban on its operations was ostensibly based on a report that Fine had knowingly permitted a third-party charterer to use Fine aircraft to transport arms to Ecuador at a time when Ecuador and Peru were engaged in hostilities. Fine adds that from the outset it has "vehemently disputed the allegation and strenuously maintained its complete innocence of any wrongdoing." Complaint at 4.

² The Department afforded interested parties an opportunity to respond to Peru's comments. See Notice of Action Taken dated November 3, 1995.

³ See Orders 95-11-40, 95-12-35, and 96-1-34 for a review of Fine's complaint and the pleadings filed.

⁴ The latest extension is through March 25, 1996. This was the last extension permitted under the statute absent a request from the complainant for an extension of the deadline.

After careful consideration of Fine's request and other relevant factors, including efforts at achieving a resolution, we believe that the public interest will best be served by granting Fine's waiver request and deferring action on the complaint through April 9, 1996.⁵

ACCORDINGLY,

1. We grant the motion of Fine Airlines, Inc., to defer action through April 9, 1996, on its complaint against the Government of the Republic of Peru, in Docket OST-95-691; and
2. We will serve this order on American Airlines, Inc.; Challenge Air Cargo; Fine Airlines, Inc.; United Air Lines, Inc.; Export Air del Peru; Compania de Aviacion Faucett, S.A.; Aeroperu; the United States Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (South America), the Office of the United States Trade Representative; the United States Department of

⁵ Under the Department's regulations, answers to Fine's request would not be due until seven business days after its filing, *i.e.* April 2, 1996. As that would be after expiration of the current deadline, March 25, 1996, we have decided to act on Fine's request without awaiting expiration of the period for answers. Should any additional answers be filed, we will address them in a subsequent order.

Commerce (Office of Service Industries); the Ambassador of Peru in Washington, D.C.; and the Air Transport Association.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>.*

